IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8643 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHUPENDRABHAI MOHANBHAI CHAUHAN (MOCHI)

Versus

STATE OF GUJARAT

Appearance:

MR D.M THAKKAR with Ms SUMAN PAHWA for Petitioner

MR ND GOHIL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/03/2000

ORAL JUDGEMENT

Heard the learned advocates.

2. The petitioner challenges the Order of preventive detention dated 24th August, 1999 made against him by the District Magistrate, Vadodara in exercise of the power

conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, `the Act'].

3. It appears that as many as five prohibition offences have been registered against the petitioner and are pending trial/investigation. Some three persons have given statements in respect of the anti-social activities of the petitioner which adversely affect the public tranquillity and the even tempo of life. The petitioner is, therefore, held to be a `bootlegger' within the meaning of Section 2 (b) of the Act and his activities are found to be prejudicial to the maintenance of `public order'. Alongwith the order of detention, the petitioner has been served with the grounds of detention and the supporting materials. It appears that pursuant to the request of anonymity made by the witnesses, the names and other details of the witnesses have been withheld under the powers conferred upon the Detaining Authority by sub-Section 2 of Section 9 of the Act.

4. It is contended that before exercising privilege under Section 9(2) of the Act, the detaining authority was duty bound to verify the genuineness of the apprehension voiced by the witnesses. Unless the detaining authority actively applies its mind to the materials before it and arrives to a subjective satisfaction, that disclosure of certain facts would be against the public interest, no fact should be kept back from the detenue. In the present case, the detaining authority has failed to consider the relevant materials or to arrive at the subjective satisfaction in respect of disclosure of names and other details about the witnesses. In absence of the subjective satisfaction in this regard, the privilege claimed under Section 9 (2) of the Act is uncalled for. Thereby the petitioner's right to make effective representation has been infringed. The order of detention, therefore, is illegal and void.

4. It is undisputed that the statements of witnesses were recorded by the police constable and were verified by the District Superintendent of Police. Apparently, the witnesses have not been examined by the detaining authority nor the Detaining Authority has recorded his subjective satisfaction. The Detaining Authority has also not filed counter-affidavit to assert that he did arrive to the subjective satisfaction as regards the necessity to withhold the identity of the witnesses. In absence of such subjective satisfaction recorded by the detaining authority, the privilege under Section 9 (2) of the Act, claimed by the Detaining Authority cannot be

sustained. In absence of the details or the identity of the witnesses, the petitioner's right to make effective representation against the order of detention has undoubtedly been infringed. The order of detention is, therefore, made in contravention of Article 21 (5) of the Constitution of India and requires to be quashed and set-aside.

5. As a result, the petition is allowed. The impugned order dated 24th August, 1999 is quashed and set-aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute. There shall be no order as to costs.

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Prakash*